

**BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION**

IN THE MATTER OF:

T.L., Student and M.L. Parent,

Petitioners

vs.

**CLAIBORNE COUNTY SCHOOL
SYSTEM,**

Respondent

DOCKET NO: 07-03-099278J

FINAL ORDER

This matter was heard on January 14, 2009 in Tazewell, Tennessee, before John Hicks, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division pursuant to T.C.A. §49-10-606 and Rule 520-1-9-.18. Attorney Melinda Baird represented Respondent Claiborne County School System. Petitioner T. L. or his parents were not present nor did counsel appear on Petitioner T. L. behalf.

This action was commenced by the filing of a Request for Due Process on behalf of T. L. by his parents.

The subject of this proceeding is whether Respondent Claiborne County School System is providing a free appropriate public education (FAPE) to Petitioner T. L.

After consideration of the entire record, testimony of witnesses, and arguments of counsel, it is DETERMINED that Respondent Claiborne County School System is providing a free appropriate public education to Petitioner T. L. and that Respondent Claiborne County School System (hereinafter "School District") is not required to pay for speech/language therapy

provided by private speech/language therapist Susan Hock of Parent-Child Services, Inc. in Knoxville, Tennessee.

Request for Due Process

T.L.'s parents seek to require the School District to provide T.L. with speech/language therapy provided by private speech/language therapist Susan Hock of Parent-Child Services, Inc. in Knoxville, Tennessee.

Relief Requested in Request for Due Process

The sole issue presented is whether the School District is obligated by the IDEA or State law to pay for speech/language therapy provided by a particular private therapist chosen by the parents.

Response to Request for Due Process

The School District asserts that speech/language therapy has been consistently provided and/or offered to T.L. by highly qualified School District employee speech/language therapists.

Motion for Default

T.L.'s parents were formally noticed as to the hearing time and location. T.L. parents refused to participate in discovery and did not accept any of the pleadings or evidence sent via Certified Mail. T.L.'s parents did not appear at the due process hearing nor did counsel appear on their behalf.

Order of Default

IT IS ORDERED that the parents of T.L. are in held **DEFAULT** for failure to appear at the hearing on the merits after receiving adequate notice. The School District elected to proceed uncontested and present its case in consideration of the time and expense invested in preparing for the hearing.

FINDINGS OF FACT

1. T.L. is a four-year-old male with a diagnosis of severe expressive language disorder. T.L.'s initial IEP meeting for transition into the School District was held on November 5, 2007.

2. T.L.'s mother, M.L. attended the November 5, 2007 IEP meeting and agreed to and signed in agreement with School District's proposal. The November 5, 2007 IEP identified

T.L. as "speech/language impaired" and provided for two hours per week of speech/language therapy.

3 On December 17, 2007, T.L.'s mother attended a second IEP team meeting. At the December 17, 2007 IEP meeting, T.L.'s mother requested that Susan Hock of Parent-Child Services, Inc. in Knoxville, Tennessee provide T.L.'s speech/language therapy. School District refused to pay Susan Hock of Parent-Child Services, Inc. for the proposed speech/language therapy. School District determined that School District employee/therapists should provide the proposed speech/language therapy. School District recommended that T.L. be enrolled in a School District's pre-school program to improve T.L. language skills. In addition, School District offered two hours per week of speech/language therapy to T.L. during the summer of 2008. T.L. enrolled in the Alpha School preschool program in January of 2008.

4. In January of 2008, T.L. began receiving a total of two hours per week of individual and small group speech/language therapy from School District employee/therapists, Janet Gilbert and Donna Neely.

5. T.L. received speech/language therapy from School District employee/therapists from January 16, 2008 through May 21, 2008. T.L. made progress in expressive language development and experiencing a developmental "burst" during March and April of 2008.

6. During March and April of 2008, T.L.'s expressive utterances increased from one or two words to more than thirty words. In a therapy session on May 21, 2008, T.L. uttered 42 intelligible words.

7. At the April 14, 2008 IEP meeting, T.L.'s progress in language development was discussed with his parents. Employee/therapist Gilbert provided the parents a list of 30 words

that T.L. had uttered. T.L.'s mother rejected the list of 30 words and accused Ms. Gilbert of lying about the extent of T.L.'s progress in language development.

8. At the April 14, 2008 IEP meeting, T.L.'s mother requested an "independent educational evaluation" from their preferred private therapist, Susan Hock. T.L.'s mother further demanded that Susan Hock be paid by the School District to provide one hour per week of speech/language therapy to T.L. instead of the two hours per week of therapy provided by School District employee/therapists. School District agreed to pay for an independent evaluation by Susan Hock but refused to pay Susan Hock to provide speech/language therapy for T.L.

9. T.L.'s mother refused to sign the April 14, 2008 IEP.

10. On April 26, 2008, T.L. was evaluated by Susan Hock at the School District. On June 10, 2008, Susan Hock recommended intensive speech/language therapy for T.L. Susan Hock and the School District employee/therapists have Master's Degrees. Susan Hock does not question the professional competency of School District employee/therapists and has never advised T.L.'s parents to withdraw T.L. from speech/language therapy with School District employee/therapists.

11. At the June 11, 2008 IEP meeting, the team viewed and considered Susan Hock's June 10, 2008 evaluation report. Employee/therapist Gilbert provided T.L.'s mother with a list of 42 words that T.L. had uttered during a recent therapy session. T.L.'s mother again accused Gilbert of lying. T.L.'s mother did not believe that T.L. was capable of uttering the 42 words.

12. The School District again refused T.L.'s mother's request to pay for four (4) hours per week of speech/language therapy to be provided by Susan Hock. School District recommended that T.L. continue to receive two (2) hours per week of individualized and small group therapy from School District employee/therapists. T.L.'s mother demanded that therapy

would only be provided by Susan Hock and formally withdrew consent for T.L. to receive speech/language therapy from School District employee/therapists.

13. On June 11, 2008, T.L.'s parents filed a Complaint for Due Process.

14. School District sought permission to retain Dr. Denise Gibbs, an expert in speech/language pathology to evaluate T.L. T.L.'s mother refused. The School District requested an order from an administrative law judge and on September 25, 2008 an order was issued granting the School District's request and ordered that the evaluation be audio-taped for the parents.

15. On October 14-15, 2008, Dr. Gibbs conducted a two-day evaluation of T.L. at the Alpha School's preschool program. Dr. Gibbs concluded that T.L. suffers from a severe expressive language disorder. Dr. Gibbs further concluded that T.L. had age-appropriate receptive language abilities. Dr. Gibbs recommended that T.L. be provided intensive speech/language therapy within the preschool program environment.

16. On October 15, 2008, after the evaluation, Dr. Gibbs met with T.L.'s parents for approximately an hour-and-a-half. Dr. Gibbs played portions of the audio-tape recorded during the evaluation. Dr. Gibbs pleaded with T.L.'s parents to allow T.L. to continue speech/language therapy with School District employee/therapists pending the conclusion of the instant due process proceedings. Dr. Gibbs informed the parents that the School District had offered to provide therapy up to five (5) times per week during the process. The parents refused to allow T.L. to continue speech/language therapy with School District employee/therapists.

17. Dr. Gibbs observed School District employee/therapists at speech/language therapy sessions with other School District preschool children. Dr. Gibbs opined, "I saw them in action with preschool children, both of them, and they are outstanding, they are excellent, they

are very competent, they are very caring. Dr. Gibbs concluded that "he [T.L.] is absolutely ready for this kind of therapy and should respond very well if he is allowed to have this kind of therapy."

18. Dr. Gibbs reviewed Susan Hock's evaluation report and recommendations. Dr. Gibbs testified that Susan Hock's recommended therapy was inappropriate, stating, "the things she has targeted to work on will absolutely not result in gain for this child in the things that he needs gain in." Moreover, Dr. Gibbs believes that "her therapy is not just wrong; it is like written for somebody that T.L. isn't." In fact, Dr. Gibbs testified that allowing Susan Hock to provide therapy to T.L. would "definitely not be in T.L.'s best interest" and "would be a year wasted." Rather, Dr. Gibbs recommends that T.L. receive "indirect language stimulation" in the preschool classroom accompanied by direct and small group therapy.

19. On August 27, 2008, T.L.'s IEP team was convened for the purpose of reviewing Dr. Denise Gibbs' evaluation report and recommendations. At this meeting, the School District offered to provide T.L. with speech/language therapy five times per week. Dr. Gibbs characterized the offer of speech/language therapy made by the School District as "the Cadillac of services for this child." This offer was rejected by T.L.'s parents.

20. On October 13, 2008, an IEP Team meeting was held to conduct an annual review. The School District attempted to persuade T.L.'s parents to allow T.L. to participate in speech/language therapy pending the conclusion of the instant due process hearing. T.L.'s parents refused and rejected speech/language therapy.

21. Several attempts by School District to provide T.L.'s parents with documentary evidence, audio-tapes of Dr. Gibbs' evaluation, videotapes of Dr. Gibbs' evaluation and the

deposition transcript of Susan Hock. All materials and documents were sent via Certified Mail, Return Receipt Requested. None of the packages were accepted for delivery by the parents.

22. T.L.'s parents were adequately and timely noticed that the due process hearing was scheduled to convene at 9:00 a.m. on January 14, 2009 at the offices of the Claiborne County School System. T.L.'s parents failed to appear at the January 14, 2009 due process hearing.

CONCLUSIONS OF LAW

1. It is CONCLUDED that T.L.'s parents failed to meet the required burden of proof necessary to show that the School District is obligated pursuant to the IDEA or State law to pay private therapist Susan Hock of Parent-Child Services, Inc. in Knoxville, Tennessee to provide speech/language therapy for T.L.

2. It is CONCLUDED that T.L.'s parents failed to meet the required burden of proof necessary to show that the School District is not providing a free appropriate public education to T. L. for not paying private therapist Susan Hock of Parent-Child Services, Inc. in Knoxville, Tennessee for speech/language therapy for T.L.

3. It is CONCLUDED that T.L.'s parents have consistently and steadfastly refusing to allow the School District's speech/language therapists to provide speech/language therapy for T.L.

4. It is CONCLUDED that the School District has consistently provided and/or offered speech/language therapy to T.L. by highly qualified School District employee speech/language therapists.

5. It is CONCLUDED that T.L. is a "student with a disability" as defined by the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. 1400 et seq. T.L. suffers from

a severe expressive language disorder and is classified as "Speech/Language Impaired" for purposes of the IDEA.

6. C.F.R. § 300.17 Free appropriate public education of the IDEA states as follows:

Free appropriate public education or FAPE means special education and related services that-

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part.
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §300.320 through 300.324.

7. When determining whether a free appropriate public education has been provided to a certifiably disabled student, the inquiry under the Individuals with Disabilities Education Act (IDEA) is two-fold:

First, has the state complied with the procedure set forth in the Act; and, **Second**, is the IEP developed through the Act's procedures reasonably calculated to enable a child to receive educational benefit. Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). Once the school district has met these two requirements, the courts cannot require more. The purpose of the IDEA is to open the door to handicap children, not to educate a handicapped child to her highest potential. K.T. v. Elmhurst Community School District, 2002WL433061. Moreover, the IDEA requires the educational equivalent of a serviceable Chevrolet to every handicapped student, not a Cadillac solely for appellant's use. Doe v. Board of Education of Tullahoma City Schools, et al, 9 F.3d 455, 459, 460. "Be that as it may, we hold that the board is not required to provide a Cadillac, and that the proposed IEP is reasonably calculated to provide educational benefits to appellant and is therefore, in compliance of the IDEA." Id.

8. It is CONCLUDED that the School District is providing FAPE to T.L. The School District has complied with the procedure set forth in the Act and has developed IEPs through the Act's procedures that are reasonably calculated to enable T.L. to receive educational benefit.

10. It is CONCLUDED that School District developed and implemented IEPs compliant with the Act's procedures and that were reasonably calculated to enable T.L., to receive educational benefit. The IEPs ensured that all the special education and related services would be provided in the least restrictive environment the IEPs were in substantial compliance with both the procedural and substantive requirements of the IDEA.

11. It is CONCLUDED that the IEPs developed and implemented by the School District contained written statements of the specific services to be provided, ensured that T.L.'s individual needs and potential were considered and ensured that the services provided were reasonably calculated to confer educational benefit.

12. It is CONCLUDED that the School District has consistently provided and/or offered speech/language therapy to T.L. by highly qualified School District employee speech/language therapists.

13. It is CONCLUDED that T.L.'s parents have disrupted the School District ability to deliver the required speech/language therapy to T.L. by consistently and steadfastly refusing to allow the School District's speech/language therapists to provide speech/language therapy for T.L.

14. It is CONCLUDED that the IDEA does not authorize parents to select a particular individual to provide special education and related services. The IDEA requires that services are

to be provided at public expense, under public supervision and direction, and without charge to T.L.'s parents. Personnel decisions are within the sole discretion of the School District.

15. It is CONCLUDED that T.L.'s parents have consistently demanded that T.L. receive speech/language therapy from Susan Hock of Parent-Child Services, Inc. rather than speech/language therapy provided by School District employee speech/language therapists, Janet Gilbert and Donna Neely. T.L.'s parents have not offered any explanation for their insistence that Susan Hock deliver speech/language therapy to T.L. and have not offered any valid reason why School District employee speech/language therapists are not qualified or should not be allowed to provide speech/language therapy to T.L.

16. It is CONCLUDED that T.L.'s parents may not compel the School District to utilize a particular educational methodology or provider without a showing that the School District is failing to provide a free appropriate public education to T.L. The record clearly demonstrates T.L. made tremendous progress in expressive language skills during the four months his parents permitted School District employee speech/language therapists to provide speech/language therapy to T.L. The record clearly demonstrates that the speech/language therapy provided the School District was reasonably calculated to enable T.L. to receive educational benefit. The record clearly demonstrates that T.L. enrolled in the Alpha School preschool program in January of 2008 and improved his expressive language skills to a list of 30 words by April 14, 2008 and to a list of 42 words by June 11, 2008. School District's expert Dr. Gibbs opined that if T.L. were to begin therapy with the School District's speech/language therapists immediately he could be expected to attain normal communication skills by the first or second grade.

17. It is CONCLUDED that T.L.'s parents' have consistently and steadfastly refused to allow the School District's speech/language therapists to provide speech/language therapy for T.L. The experts agree that T.L. is in eminent danger of developing a life-long language disability without immediately receiving speech/language therapist.

18 20 USCA 1415(I) (3) (B) which states as follows:

Award of attorney's fees

(i) in general any action or proceeding brought under this section, the court, in its discretion, may award a reasonable attorney's fees as part of the costs –

(II) to a prevailing party, who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or a subsequent cause of action which is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(III) to a prevailing State educational agency or local educational agency against the attorney of a parent or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

19. It is CONCLUDED that awarding of attorney's fees in this case is within the discretion of a court; not by an administrative law judge.

20. It is CONCLUDED that the School District is not required to pay private speech/language therapist Susan Hock of Parent-Child Services, Inc. in Knoxville, Tennessee to provide T.L. with speech/language therapy.

21. It is CONCLUDED that the School District has consistently provided and/or offered speech/language therapy to T.L. by highly qualified School District employee speech/language therapists.

22. It is CONCLUDED that the School District is providing a FAPE (free appropriate public education) to T. L.

23. IT IS CONCLUDED that the School District is the prevailing party in this matter.

24. IT IS ORDERED that the parents of T.L. are held in **DEFAULT**.

25. IT IS ORDERED that this matter is DISMISSED.

Entered this the 23rd day of March, 2009.



JOHN HICKS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Notice

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or the Chancery Court in the county in which the petitioner resides or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order. In appropriate cases, the reviewing court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of Section 49-10-601 of the Tennessee Code Annotated.